

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SAMEERA AHMAD

Plaintiff,

**REPORT AND
RECOMMENDATION**

v.

06-CV-00339(A)(M)

KHALID S. MAHRAN, and
KIDNEY CARE, P.C.

Defendants.

Before me is plaintiff's motion to reopen and reinstate this action (Dkt. #54).

The motion was referred to me by Hon. Richard J. Arcara to hear and report in accordance with 28 U.S.C. §636(b)(1) (Dkt. #55). For the following reasons, I recommend that the motion be GRANTED.

BACKGROUND

This case was initially referred to me by Judge Arcara on March 9, 2007. After the parties' cross-motions for summary judgment (Dkt. ##21 and 26) were fully briefed and argued, the parties advised me that they had settled the case (Dkt. #50). A stipulation of dismissal was filed by the parties on May 8, 2008, which stated that the dismissal "shall remain conditional on full performance of the parties' settlement agreement for ninety (90) days from entry hereof" (Dkt. #52). The stipulation of dismissal was approved by Judge Arcara and he ordered the Clerk of the Court to close the case (Dkt. #53).

On July 9, 2008, plaintiff moved to reopen the case, arguing that "defendants have refused to consummate the stipulated Settlement Agreement and have rescinded the same" (Dkt.

#54). Defendants do not contest that assertion, and “state that they have no opposition to the Plaintiff’s Motion to Reopen and Reinstate Case” (Dkt. #65).

DISCUSSION AND ANALYSIS

It being uncontested that defendants have rescinded the stipulated settlement agreement and there being no opposition from defendants to plaintiff’s motion, I recommend that plaintiff’s motion to reopen and reinstate the case be granted, and that the case be re-referred to me for supervision of pretrial proceedings, including the preparation of a Report and Recommendation concerning the summary judgment motions which were pending at the time of the settlement.

CONCLUSION

For these reasons, I recommend that plaintiff’s motion (Dkt. #54) be GRANTED. Pursuant to 28 U.S.C. §636(b)(1), it is hereby

ORDERED, that this Report and Recommendation be filed with the Clerk of the Court.

ANY OBJECTIONS to this Report and Recommendation must be filed with the Clerk of this Court within ten (10) days after receipt of a copy of this Report and Recommendation in accordance with the above statute, Fed. R. Civ. P. 72(b) and Local Rule 72.3(a)(3).

The district judge will ordinarily refuse to consider *de novo* arguments, case law and/or evidentiary material which could have been, but was not, presented to the magistrate judge

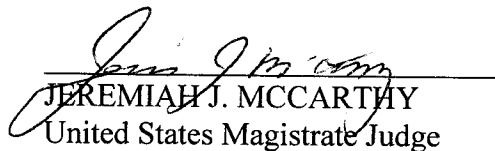
in the first instance. See, e.g., Patterson-Leitch Co. v. Massachusetts Mun. Wholesale Electric Co., 840 F. 2d 985 (1st Cir. 1988).

Failure to file objections within the specified time or to request an extension of such time waives the right to appeal the District Court's Order. Thomas v. Arn, 474 U.S. 140 (1985); Wesolek v. Canadair Ltd., 838 F. 2d 55 (2d Cir. 1988).

The parties are reminded that, pursuant to Rule 72.3(a)(3) of the Local Rules of Civil Procedure for the Western District of New York, "written objections shall specifically identify the portions of the proposed findings and recommendations to which objection is made and the basis for such objection and shall be supported by legal authority." Failure to comply with the provisions of Rule 72.3(a)(3), or with the similar provisions of Rule 72.3(a)(2) (concerning objections to a Magistrate Judge's Report and Recommendation), may result in the District Judge's refusal to consider the objection.

SO ORDERED.

DATED: September 3, 2008


JEREMIAH J. MCCARTHY
United States Magistrate Judge